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November 29, 2005

Via Overnight Mail and ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: WPTZ-DT, North Pole, New York
MB Docket No. 05-317
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

On behalf of Hearst-Argyle Stations, Inc. ("Hearst-Argyle"), permittee of Digital Television Station WPTZ-DT, North Pole, New York, this letter requests a waiver to prohibit satellite subscribers from obtaining signal tests of WPTZ-DT's digital signal pursuant to Section 339(a)(2)(D)(vii) of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The instant request is filed pursuant to the procedures set forth in the Commission's Public Notice in DA 05-2979 (Nov. 17, 2005).

WPTZ-DT is the NBC affiliate located in the Burlington-Plattsburgh Designated Market Area ("DMA"). The Burlington-Plattsburgh DMA is ranked 90th among Nielsen Media's 210 television markets for the 2005-2006 television season. WPTZ-DT has received a tentative digital

channel designation of Channel 14, which is WPTZ-DT's allotted digital channel. *See* Public Notice, DA 05-2649 (Oct. 4, 2005). Accordingly, absent grant of the instant waiver request, effective April 30, 2006, satellite subscribers may request a signal test to demonstrate eligibility under SHVERA to receive a distant digital signal of a station affiliated with the same network as WPTZ-DT.

Pursuant to **Section 339(a)(2)(D)(viii)(II)** of the Act, Hearst-Argyle requests a waiver on the basis that WPTZ-DT experiences "clear zoning [and] environmental legal impediments."

In WPTZ's FCC Form 381 filing, FCC File Number BCERCT-20041105AAP, WPTZ certified that it will operate its post-transition DTV station as authorized by its construction permit in FCC File No. BPCDT-19991020ACA. However, due to the reasons set forth therein, WPTZ-DT is not currently on the air with a DTV signal. The Commission last granted WPTZ-DT an extension of its DTV construction permit and its request for waiver of the DTV maximization deadline on May 20, 2005 (FCC File No. BEPCDT-20050406AAB). A request for further extension of these deadlines is pending in FCC File No. BEPCDT-20051116AAZ.

As previously explained to the Commission, Hearst-Argyle is a member of a coalition with four other television stations (and two radio stations) that proposes co-location of their DTV facilities on top of Mt. Mansfield in Vermont on land owned by the University of Vermont. Such co-location will plainly serve the public interest by minimizing the number of towers necessary for all seven stations. However, the co-location is complicated because the State of Vermont has a comprehensive state and local environmental permitting process, particularly for development on the top of Mt. Mansfield, the tallest mountain peak in Vermont, and because Mt. Mansfield has a short construction season due to extreme weather conditions.

After a lengthy and complex process, the coalition obtained the necessary "Act 250" approval from Vermont earlier this year, and construction of the new tower site commenced in late spring of 2005. Because construction is generally limited to the months of May through October, and because of Vermont's "Act 250" permit constraints, the most the coalition was able to do this year was to complete the transmitter building and tower foundations. The coalition projects that it will be able to resume construction at the beginning of next year's construction season (mid to late spring, 2006), and that construction will be complete and the stations will be able to begin on-air testing in the fall of 2006.

The Commission is well aware of the issues faced by the Mt. Mansfield DTV coalition. In addition to various meetings during which the broadcasters have discussed these issues with the Media Bureau staff, earlier this year the Commission acknowledged that "the siting of DTV facilities remains a challenge for many broadcasters. Construction and tower siting delays of the type [on Mt. Mansfield] qualify as uncontrollable and unforeseeable delays that warrant extension of these stations' DTV construction deadlines." *DTV Build-Out, Requests for Extension of the Digital*

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Television Construction Deadline, Commercial Television Stations With May 1, 2002 Deadline, Order, FCC 05-67 (Mar. 15, 2005), at ¶ 16; *see also id.* at ¶ 9.

While the circumstances and complexities of Vermont's environmental review and approval processes, and the short construction season on Mt. Mansfield, are beyond WPTZ's control, Hearst-Argyle is taking all reasonable steps to complete construction.

Thus, absent grant of the instant waiver request to prevent signal testing under SHVERA, WPTZ-DT is in jeopardy of losing service to a significant portion (which, theoretically, could reach 100%) of the people predicted to receive service from the station, all of whom may otherwise be eligible to receive service from a distant network affiliate.

Accordingly, because WPTZ-DT has experienced construction delays due to Vermont's "zoning [and] environmental legal impediments," WPTZ-DT satisfies the waiver criterion of Section 339(a)(2)(D)(viii)(II) of the Act.

For the reasons stated herein, Hearst-Argyle requests a waiver to prohibit digital signal testing under SHVERA. If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
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